Ilwaco Ry. & Nav. Co. v. *Oregon Short Line & U. N. R. Co.*, 57 Fed. 673. *Contra, Pioneer Tel. & Tel. Co.* v. *Grant County Rural Tel. Co.*, 119 Pac. 968 (Okla.). On this ground the principal case is sustainable. Cases where the power of eminent domain is actually exercised are of course distinguishable. *Billings Mut. Tel. Co.* v. *Rocky Mountain Bell Tel. Co.*, 155 Fed. 207.

RAILROADS — LIABILITY FOR FIRES — CONTRIBUTORY NEGLIGENCE OF ABUTTING LANDOWNER. — The plaintiff stacked flax straw on his own land near the defendant railroad's right of way. It was destroyed by fire caused by the negligent escape of sparks from a locomotive. *Held*, that the defense of contributory negligence is not open to the defendant. *Le Roy Fibre Co.* v. *Chicago, Milwaukee & St. P. Ry. Co.*, U. S. Sup. Ct., Feb. 24, 1914.

The liability of a railroad for fires caused by sparks escaping from a locomotive ordinarily depends on negligence. *Flinn* v. *New York Cent. & H. R. R. Co.*, 142 N. Y. 11, 36 N. E. 1046; *Bernard* v. *Richmond, F. & P. Ry. Co.*, 85 Va. 792, 8 S. E. 785. By statute in some states the burden of proving that there was no negligence is on the railroad. *Green Ridge R. Co.* v. *Brinkman*, 64 Md. 52, 20 Atl. 1024. Other statutes, however, impose an absolute liability. *Union Pacific Ry. Co.* v. *De Busk*, 12 Colo. 294, 20 Pac. 752. Under such statutes the railroad is practically an insurer of the safety of adjoining property and the plaintiff's negligence is immaterial. *West* v. *Chicago & N. W. Ry. Co.*, 77 Ia. 654, 35 N. W. 479, 42 N. W. 512. See 25 HARV. L. REV. 463, 465. When the railroad's liability depends on negligence, the question arises whether it is contributory negligence in a landowner to allow the accumulation or deposit of inflammables near the right of way. Even admitting it negligent, the last clear chance doctrine is clearly applicable and the plaintiff should not be barred. *Davies* v. *Mann*, 10 M. & W. 546. See 14 HARV. L. REV. 74. But it does not seem that depositing property near the right of way constitutes negligence. The landowner may assume the risk of damage from fire where it is caused not by the railroad's negligence but by pure accident; but this, in the absence of statute, would furnish no ground for recovery. Where the damage is caused by negligent sparks the situation is essentially different. The landowner is entitled to assume that the railroad will not be negligent, and to place on him a duty to guard against the railroad's negligence practically subjects his land to an easement in favor of the railroad. Accordingly the weight of authority agrees with the principal case. *Chicago & E. R. Co.* v. *Smith*, 6 Ind. App. 262, 33 N. E. 241; *Alabama & V. Ry. Co.* v. *Sol Fried Co.*, 81 Miss. 314, 33 So. 74; *Kellogg* v. *Chicago & N. W. Ry. Co.*, 26 Wis. 223. *Contra, Murphy* v. *Chicago & N. W. Ry. Co.*, 45 Wis. 222; *Omaha Fair & Exposition Ass'n* v. *Missouri Pac. R. Co.*, 42 Neb. 105, 60 N. W. 330.

RULE IN SHELLEY'S CASE — APPLICATION OF ARCHER'S CASE IN AMERICA. — A deed in substance conveyed property to Sarah for life and "upon her death to the heirs of the body of said Sarah, their heirs and assigns." *Held*, that the rule in Archer's case applies, and that the heirs of the body of Sarah take a contingent fee by way of purchase. *Ætna Life Ins. Co.* v. *Hoppin* (C. C. A., 7th Circ. Not yet reported).

For a discussion of the application of the rule in Archer's case in America, see page 673 of this issue.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — CONSTITUTIONAL RESTRICTIONS — TAXATION OF FOREIGN PERSONALTY AND DUE PROCESS OF LAW. — A federal statute imposed a tax upon the owners of foreign-built pleasure yachts. The defendant, though domiciled within the United States, had kept his yacht in Europe since 1904, and objected to the

tax as a violation of the Fifth Amendment. *Held*, that the tax is constitutional. *United States* v. *Bennett*, 34 Sup. Ct. 433.

For a discussion of the constitutional restrictions on taxation, see this issue of the REVIEW, p. 675.

TORTS — DAMAGE TO CONTRACT RIGHT BY ACT OF THIRD PARTY — RIGHT OF ACTION FOR SEDUCTION OF FIANCÉE. — The defendant seduced the plaintiff's affianced wife. The plaintiff sues, alleging that the defendant "maliciously interfered with the marriage contract then subsisting, causing the plaintiff properly to break it." The defendant demurs. *Held*, that the demurrer be sustained. *Davis* v. *Condit*, 144 N. W. 1089 (Minn.).

A promise to marry creates a certain confidential relation above that of the ordinary relation of promisee and promisor. *Kline* v. *Kline*, 57 Pa. St. 120; *Ward* v. *Ward*, 63 Oh. St. 125, 57 N. E. 1095. But a man has no right to the services of his fiancée, and it seems clear that there is no such status as to give the man a right of action for interference with it, analogous to the action for criminal conversation. However, chastity is at least an implied condition in a contract to marry, and the woman's lapse excuses the man's performance. *Irving* v. *Greenwood*, 1 Car. & P. 350; *Von Storch* v. *Griffin*, 77 Pa. St. 504. Accordingly the plaintiff should have an action against the defendant who has intentionally (or maliciously) deprived him of the benefit of a contract, by preventing the happening of the condition. *Cf. Morgan* v. *Andrews*, 107 Mich. 33, 64 N. W. 869; *Chipley* v. *Atkinson*, 23 Fla. 206, 1 So. 934. It is submitted, moreover, that the woman impliedly promised to remain chaste. See *Sheahan* v. *Barry*, 27 Mich. 217, 222. Therefore a lapse from virtue is a breach of contract and should give the man a right of action against the fiancée and consequently also against one who has intentionally procured the breach. *Lumley* v. *Gye*, 2 El. & Bl. 216; *Walker* v. *Cronin*, 107 Mass. 555. Regarding the defendant's conduct either as the preventing of the happening of a condition or as the procuring of a breach, this result seems clear on authority, provided that the defendant acted intending to interfere with the contract. It is hard to see on principle why the same result should not follow in any case where the defendant acts knowing of the contract, or even when he ought to know of it, but the authorities seem to stop short of this. See 24 HARV. L. REV. 397. However, it has been suggested that to allow an action against a third party who has been instrumental in causing a breach of a contract to marry would be "subversive of proper liberty of marriage" and would "degrade rather than add to the sanctity of the marriage relation." Editorial in N. Y. L. J. Volume L, at p. 2884.

TORTS — UNUSUAL CASES OF TORT LIABILITY — NEGLIGENT INTERFERENCE WITH PROBABLE EXPECTANCY OF BUSINESS. — The neighborhood around the plaintiff's grist mill was depopulated because of malaria arising from waters backed up by the defendant power company's dam. The plaintiff sues for the loss of business due to the departure of his customers. *Held*, that he cannot recover for this. *Central Ga. Power Co.* v. *Stubbs*, 80 S. E. 636 (Ga.).

Any one who has been injured by another acting intentionally and without justification may recover for the injury inflicted. See *Skinner & Co.* v. *Shew*, [1893] 1 Ch. 413, 422; *Aikens* v. *Wisconsin*, 195 U. S. 194, 204. This general principle is illustrated by the actions for intentionally procuring a breach of contract and for an intentional interference with a probable expectancy of business, where the specific injury does not fall within any of the historical categories of tort liability. *Lumley* v. *Gye*, 2 E. & B. 216; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230. The duty to use due care to avoid causing unintended harm to others should in any symmetrical system